

## Summary of House Bill 572

### Drug Testing of Miners

House Bill 572 was signed into law by Governor Fletcher and will become effective July 12, 2006. This important legislation incorporates the recommendations of the Mine Substance Abuse Task Force; comprised of 15 representatives from the coal industry, labor, MSHA, the states of Kentucky, West Virginia, Virginia, the Kentucky Department of Insurance and the Kentucky Office of Drug Control Policy.

The task force met in daylong sessions from March to November of 2005 and produced the [Mine Substance Abuse Task Force Report](#) in December of 2005. A copy of HB 572 can be obtained by clicking [here](#).

#### **Effective July 12, 2006 – Drug Testing Requirements and Provisions:**

- Mining entities that adopt a drug free workplace program, certified by the Office of Mine Safety and Licensing, will be eligible to receive a 5% credit on workers compensation premiums as long as their credit is actuarially sound. The program must include an employee assistance program. This does not apply to minimum premium policies.
  - OMSL is currently developing regulations to address the requirements for certification of drug free workplace programs.
- All applicants for mining certifications offered under KRS Chapters 351 and 352, including mine emergency medical technicians, must demonstrate that they are drug and alcohol free before their certifications will be issued. These new requirements include:
  - Breathalyzer tests will be conducted at exam sites. A level of .04 or greater will prevent the applicant from testing.
  - The applicant must have passed an 11-panel drug test performed through an Office of Mine Safety and Licensing (OMSL) contractor or submit the results from a qualifying drug test prior to issuance of the certification.
  - Specimen collection and testing must conform to the procedures of the U.S. Department of Health & Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA).
  - The Office of Mine Safety and Licensing will maintain and publish annually a list of certified specimen collection services and testing laboratories from which it will accept data.
  - Applicants will be provided with a copy of their testing results.
  - Any person denied certification may seek a retest at their own expense within 10 days of notification of the initial test or may appeal the results to the Mine Safety Review Commission within 30 days of the notification of the test results.

- If the applicant fails a second drug test, the individual must be evaluated by a substance abuse professional, document that they have completed the recommended treatment and pass a drug screen to qualify to apply for miner certification.
  - Applicants will be required to pay for the drug and alcohol test, but the employer of an applicant is required to reimburse the cost of one drug test for an existing employee seeking a specialty certification. In addition, an employer must reimburse applicants' fees for one test when the applicant gains initial mining employment.
- An applicant will be denied certification under the following circumstances: if the drug test is positive, if the blood alcohol level exceeds 0.04, if the test results indicate an adulterated specimen, or if the applicant refuses to submit to testing.
- Confidentiality of test results will be preserved except in waiver and court or appeal related circumstances. Drug test results cannot be released or used in criminal proceedings against the applicant.
- The annual training requirements for miners and supervisors has been revised to include instruction on substance abuse awareness training, which includes:
  - A requirement for a permit as a trainee miner will be one hour of classroom training dedicated to alcohol and substance abuse education.
  - Thirty minutes annually will be dedicated to alcohol and substance abuse education for all certified persons.
  - One hour of initial substance abuse training and education will be required as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement will not apply to certified persons who received the one hour initial substance abuse training and education as part of their 40 hour or 24 hour new miner training.
  - In addition to the 30 minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel will be required to receive an additional 30 minutes of alcohol and substance abuse awareness training annually.
- The new legislation requires the Commissioner to suspend the certification of any miner that violates the drug and alcohol free status of their certification; however, the certification cannot be revoked unless the miner is afforded an opportunity for a hearing before the Mine Safety Review Commission.
- Any miner whose certification has been suspended or revoked for violating the drug and alcohol free condition of certification may reapply for certification with the Mining Board, provided that he or she has successfully passed a drug and alcohol test within 30 days prior to reapplication and has fulfilled the terms of final orders entered by the Mine Safety Review Commission.

- A mine licensee must report to OMSL (by close of the next business day) those miners who have been discharged for violation of a company's substance abuse policies, refused to submit to a test required by the company's substance abuse policies or have tested positive and failed to complete an employee assistance program.
- OMSL now has the authority to conduct post accident drug and alcohol testing in the event of a serious mine accident, serious physical injury or fatality. Testing can include people working in the immediate area of the accident or those that reasonably may have contributed to the accident. Post accident testing must be done within 8 hours of the accident and will be paid for by OMSL.
- Toxicology screens including the 11-panel drug screen must be performed on all victims when death occurs on mine property.
- Any trainee miner who exceeds six months in obtaining the required forty-five working days of experience must submit proof of alcohol and drug free status before being issued a miner certification.
- No person can enter or be on any licensed facility while intoxicated or under the influence of alcohol or a controlled substance or be in possession of any alcoholic beverage or controlled substance at any licensed facility.